

## PURCHASE AGREEMENT

**EFFECTIVE DATE:** May \_\_\_\_, 2013

**SELLER:** Beech-Nut Nutrition Corp.  
Domiciled in Nevada  
Address: 100 Hero Drive  
Amsterdam NY. 12010  
Attention: Steve Foster, CFO  
Telephone:  
Facsimile: ( ) \_\_\_\_-\_\_\_\_

**BUYER:** **TD Development, LLC,**  
An Ohio limited Liability Company  
Address: 5832 Meadowview Dr.  
Mason, Ohio 45040  
Attention: Todd Clifford  
Telephone: (513) 266-6414  
Email: toddwclifford@gmail.com

**ESCROW AGENT:** First American Title Insurance Company  
c/o Elite Abstract Services, LLC  
Address: 351 South Warren Street  
Suite 500  
Syracuse, New York 13202  
Attention: Gregory R. Thornton, Esq.  
Telephone: (315) 422-6900  
Facsimile: (315) 422-7400

**PROPERTY:** Seller is the owner of those several parcels of land containing approximately 27.22 acres (the "Land"), and the buildings thereon containing approximately 850,400 square feet, and other improvements thereon, commonly known as the "Old Beech-Nut Plant" (hereinafter referred to as the "Facility") located at 68 Church Street, in the City of Canajoharie, County of Montgomery, State of New York, including the Tax Parcels with Parcel Numbers listed on Exhibit A attached hereto and made a part hereof, and such Land being more particularly described on Exhibit B attached hereto and made a part hereof, together with all Salvage (as hereinafter defined), machinery, fixtures and equipment (equipment intended to mean and include fixed equipment to be inventoried by the parties to the point of first connection), and all personal property owned by Seller and used in the operation of the Facility, all strips, easements, rights-of-way, tenements, hereditaments, rights, licenses, privileges and appurtenances benefitting said Land, whether or not of record, and rights to rail service benefitting or appurtenant to the Land and the Facility, and all right, title and interest of Seller in and to any land lying in the bed of any highway, street, road, alley or other public way, opened or proposed, in front of or abutting or adjoining said Land (all of the foregoing Land, Facility, improvements, Salvage, machinery, fixtures and equipment, easements, rights-of-way, rights to rail service, if any, and right, title and interest are referred to together herein as the "Property").

## AGREEMENT OF THE PARTIES

1.1 Agreement. In consideration of the mutual promises and covenants set forth in this Agreement, Seller agrees to sell, and Buyer agrees to buy, the Property solely on the terms and conditions set forth in this Agreement.

1.2 Escrow. Promptly upon execution of this Agreement by both parties, Buyer will deliver a fully executed copy of this Agreement to Escrow Agent, together with the earnest money deposit required by **Section 2.2(a)**. The "**Opening Date**" shall be the date on which Escrow Agent receives the fully executed copy and earnest money deposit. Promptly upon receipt of those items, Escrow Agent shall notify Buyer and Seller in writing of the Opening Date. An escrow for this transaction shall be established with Escrow Agent, and Escrow Agent is engaged to administer the escrow. This Agreement constitutes escrow instructions to Escrow Agent. Should Escrow Agent require the execution of its standard form printed escrow instructions, Buyer and Seller agree to execute same; however, such instructions shall be construed as applying only to Escrow Agent's engagement, and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control.

1.3 Certain Definitions. As used in this Agreement, certain capitalized terms have the following meanings:

(a) "**Environmental Law**" means any past, present or future federal, state or local law, statute, rule, regulation, code, ordinance, order, decree, judgment, injunction, notice, policy, or binding agreement, and all amendments thereto, issued, promulgated, or entered into by any governmental authority, relating in any way to the environment; the preservation, degradation, loss, damage, restoration, replacement or reclamation of natural resources; waste or chemical handling, exposure, management, generation, processing, treatment, storage, transport, disposal; health; industrial hygiene; safety; or Hazardous Substance.

(b) "**Hazardous Substance**" means (a) any material, substance or waste which is defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "pollutant," "toxic waste" or "toxic substance" under any provision of Environmental Law; (b) any asbestos or asbestos containing materials in any form that is or could become friable, tremolite, anthophyllite, actinolite; (c) any solvents, degreasers, heavy metals, refrigerants, nitrates, urea formaldehyde, polychlorinated biphenyls, dioxins, petroleum and petroleum products and derivatives, fuel additives, ethanol, bio-fuels, methyl tertiary butyl ether; and (d) any other product, byproduct, compound, substance, chemical, material, waste; solid, liquid, gaseous or thermal irritant; greenhouse gas; carbon emission; atomic, molecular and macromolecular nanomaterials; and microbial material whose presence, characteristics, nature, quantity, intensity, existence, use, manufacture, possession, handling, disposal, transportation, spill, release, threatened release, cleanup, remedial action or effect, either by itself or in combination with other materials is or is allegedly: (x) injurious, dangerous, toxic, hazardous to human health, safety or welfare or any other portion of the environment or natural resources; (y) is now or at any time in the future becomes regulated, defined, listed, prohibited, controlled, studied or monitored in any manner by any governmental body or Environmental Law; or (z) a basis for liability, responsibility, or duty owed to any governmental body or private or public third party.

(c) "**Property**" means the Property as more particularly described above.

(d) “**Salvage**” means the following:

(i) all buildings, structures, fixtures and other improvements above any concrete foundations on the Land, and any other materials whatsoever located above grade level (other than soil and vegetation) on the Land (collectively, “**Improvements**”), and all fixtures and equipment attached to or located upon or within any Improvements, including without limitation all central heating and cooling units, attached floor and wall coverings; boilers and incinerators; paneling; ventilating, humidifying, dehumidifying, plumbing, fire extinguishing and electrical systems, and all appliances, machinery, fixtures and equipment pertaining thereto; **but excluding** (A) any improvements below concrete foundations or below grade level (including without limitation, floor slabs, foundations, footings, basements, corridors, channels, pits or the like), (B) any concrete or asphalt surface at or below grade which serves as the foundation for any building located on the Land, or as a parking or loading area or driveway, and (C) any Hazardous Substance; and

(ii) Any and all personal property currently located on the Land or within the Improvements, whether attached or unattached to the Improvements, including, without limitation, all furniture, studs, structural steel, cast iron, copper, soffits, pipes (including without limitation, steam and condensate pipe and process chocolate pipe), conduit, roof drains, gutters, flashings, reinforcing steel, doors, bi-fold doors, overhead doors, sliding doors, metal windows, suspension systems, lockers, hardware, file cabinets, shelving units, racks, machinery, desks, winches, water tanks, radiators, water pumps and tanks, ventilation ducts, bathroom accessory fixtures, exhaust hoods, boilers, grills, air units, and fencing.

## **ARTICLE 2 PURCHASE TERMS**

Purchase Price. The total purchase price for Property (“**Purchase Price**”) is \$250,000.00.

2.1 Payment. The Purchase Price shall be paid by Buyer as follows:

(a) Earnest Money. Promptly upon mutual execution of this Agreement by Buyer and Seller, Buyer shall deposit with the Escrow Agent the sum of \$5,000.00 as an earnest money deposit, which shall be placed by Escrow Agent in an interest bearing account with the accrued interest to belong to the party entitled to receive the earnest money deposit.

(b) Cash Payment at Closing. On or before the Closing (defined later), Buyer shall deposit in escrow the sum of \$245,000.00

(c) Manner of Payment. All payments that Buyer is required to make under this Section shall be made by cashier’s check payable to Escrow Agent or by wire transfer of ready funds to the account of Escrow Agent.

2.2 Disbursements. If the escrow closes, the earnest money deposit in escrow shall be credited against the Purchase Price at Closing. If the Agreement is cancelled and pursuant to the terms of this Agreement, Seller becomes entitled to receive and retain the earnest money, Escrow Agent shall immediately pay to Seller the earnest money deposit then in escrow. If the Agreement is cancelled and pursuant to the terms of this Agreement, Buyer becomes entitled to a return of the earnest money deposit, Escrow Agent shall immediately refund to Buyer the earnest money deposit then in escrow.

2.3 Liens or Encumbrances. If at the date of Closing there may be liens or encumbrances on the Property which Seller is obligated to pay and discharge, including but not limited to Seller's existing financing, if any, Seller may use any portion of the balance of the Purchase Price to satisfy the same, provided Seller shall simultaneously either (i) deliver to Buyer at the Closing, instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments, which costs may be paid by the Buyer and deducted from the Purchase Price accordingly; or (ii) provided that Seller has made arrangements with the Buyer's attorney and the Escrow Agent in advance of Closing, Seller will deposit with said Escrow Agent sufficient monies, acceptable to and required by it to insure the obtaining and recording of such satisfactions and the issuance of title insurance to Buyer either free of any such liens and encumbrances, or with insurance against enforcement of same out of the Property.

### ARTICLE 3 INFORMATION TO BE PROVIDED TO BUYER; RIGHT TO INSPECT

3.1 Due Diligence Materials. Within the time periods set forth below, Seller will provide Buyer with the following (the "**Due Diligence Materials**"):

(a) Title Report. As soon as reasonably possible following the Opening Date, Buyer shall, at Buyer's expense, obtain a current preliminary title report or commitment for title insurance (the "**Title Report**") on the Property from First American Title Insurance Company (the "**Title Insurer**"). The Title Report will show the status of title to the Property as of the date of the Title Report and will be accompanied by legible copies of all documents referred to in the Title Report.

(b) Studies and Reports. Within three (7) days of the Opening Date, Seller shall, at Seller's expense, provide Buyer with the following relating to the Property, to the extent they are available and in Seller's possession or control:

- (i) Past final or draft Phase I environmental site assessments, environmental audits or inspections; soil, groundwater, surface water and well tests results; and water drainage studies and plans;
- (ii) All permits, governmental approvals, and planning and zoning materials;
- (iii) Correspondence, notices, orders from or agreements with federal or state environmental agencies or local governments;
- (iv) All existing and proposed contracts, leases, and licenses;
- (v) All existing preliminary title commitments/reports for title insurance;
- (vi) All instruments secured by or encumbering the Property;
- (vii) Property tax statements;
- (viii) All existing ALTA or other surveys covering any portion of the Land;
- (ix) Detailed inventory list of equipment and machinery;

- (x) Building and other improvement plans and drawings; and
- (xi) Any other documents or due diligence items requested by Buyer.

3.2 Survey. Buyer has the right to obtain a current ALTA survey of the Property (“**Survey**”).

3.3 Retention or Return of Information. If this Agreement is cancelled, all of the Due Diligence Materials will be returned to Seller; otherwise, Buyer may retain such Due Diligence Materials.

3.4 Right to Enter and Inspect. During the period from the Effective Date until the earlier of the Closing or cancellation of this Agreement, Seller grants Buyer the non-exclusive right and license for Buyer and Buyer’s representatives, agents, and contractors to enter upon the Property for the purpose of investigating and inspecting the Property and performing tests, studies and analyses with respect to the Property (including, without limitation, Salvage), or any portion thereof. Buyer has the right to conduct, at its sole expense, inspections and surveys of the Property and obtain a Phase I environmental site assessment, and Phase II and Phase III subsurface investigations conducted by an environmental consultant selected by Buyer. In conjunction with the Phase I, II, and III assessments, Seller shall provide access to a manager-level person with knowledge of the past operations affecting the Property. Seller agrees to cooperate in good faith by providing any needed information to assist Buyer’s consultants in completing Buyer’s environmental and other investigations of the Property or any portion thereof.

#### **ARTICLE 4 CONDITIONS TO CLOSING**

4.1 Conditions to Buyer’s Obligation to Close. Buyer’s obligations to close this transaction are subject to the satisfaction of the following conditions on and as of the Closing, unless an earlier date is specified:

(a) Title Review. Buyer is satisfied with the status of title to the Property as disclosed by the Title Report and the Survey (if any). In that regard:

(i) Buyer shall have thirty (45) days (the “**Review Period**”) following receipt of the Title Report in which to review and to give Seller and Escrow Agent written notice of any title or survey exception which is unacceptable to Buyer, in Buyer’s sole and absolute discretion (each such matter or exception, a “**Disapproved Matter**”). If Buyer does not object to an exception to title as disclosed by the Title Report or the Survey (if any) within the applicable time period, such matter or exception shall be deemed to have been approved by Buyer.

(ii) If Buyer gives timely notice of any Disapproved Matter, then Buyer may, by giving notice to Seller and Escrow Agent within the Review Period, as applicable, either:

(A) Cancel this Agreement; or

(B) Provisionally accept title subject to Seller’s removal of the Disapproved Matters, in which case Seller will use commercially reasonable efforts, at Seller’s expense, to remove the Disapproved Matters or obtain title insurance endorsements satisfactory to Buyer against such Disapproved Matters before the Closing. If Seller cannot remove such Disapproved Matters before the Closing, then, at Buyer’s election, all earnest money deposits will be returned to Buyer and this



Agreement will be cancelled, or Buyer may waive such objections and the transaction will close as scheduled.

(iii) Notwithstanding anything in this Agreement to the contrary, title to the Property shall be delivered to Buyer at the Closing free and clear of all liens, financing statements, encumbrances, claims, leases and other contracts affecting the Property and all such matters shall be released from the Property by Seller or terminated at Seller's sole expense on or before the Closing. All such liens, encumbrances, financing statements, claims, leases and contracts are disapproved for the purposes of this Section, and Buyer need not give any further notice of disapproval as to those items.

(iv) The matters shown in the Title Report (other than standard printed exceptions and exclusions that will be included in the title policy) that are approved or deemed approved by Buyer in accordance with this **Section 4.1(a)**, and any other matters approved by Buyer in writing, are referred to in this Agreement as the **"Approved Title Exceptions."**

(b) Buyer's Investigations. Buyer is satisfied with Buyer's investigations and inspections with respect to the Property and this transaction. In that regard, for a period ending at 6:00 pm (New York Time) on the date that is forty-five (45) days from the date that Buyer receives all of the items described in **Section 3.1(b)**, as extended as provided below (the **"Due Diligence Period"**), Buyer will have the absolute right to cancel this Agreement for any reason whatsoever, in Buyer's sole and absolute discretion, and if Buyer does so elect to cancel this Agreement hereunder, Buyer shall be entitled to the return of all earnest money deposits. However, until Buyer cancels, Buyer will proceed in good faith with Buyer's preliminary investigatory steps with respect to this transaction. Unless Buyer gives written notice of cancellation prior to the expiration of the Due Diligence Period, as extended, then Buyer will be deemed to have elected not to cancel the Agreement under this provision.

(c) Escrow Agent Prepared to Close and Issue Title Policy. Escrow Agent is prepared to close the transactions contemplated by this Agreement and Title Insurer is unconditionally prepared to issue the title policy in the form required by this Agreement.

(d) Truthfulness of Representations. Seller's representations and warranties set forth in this Agreement are true, complete and correct on and as of the Closing.

(e) Demolition Permit. Seller will use its best efforts to assist Buyer in obtaining, at its sole expense, a demolition permit and any other permits and other approvals (collectively **"Permit"**) for the demolition and salvage operation that Buyer intends to perform on the Property after the Closing. Buyer acknowledges and agrees that a demolition permit issued subject to providing evidence of the removal of asbestos before demolition work may be commenced will be acceptable.

(f) Full Compliance. Seller has fully performed all of its obligations to be performed by Seller on or before Closing.

(g) No Material Change. At Closing, there has been no material change to the condition of any part of the Property, or the Salvage, or any improvements, machinery or equipment located thereon since the date of this Agreement, normal wear and tear excepted.

If any of the foregoing conditions is not fulfilled on or before the date by which such contingency is to have been satisfied (the last day of the Due Diligence Period), and such condition has not otherwise been waived by Buyer in writing, Buyer may, in addition to any right or remedy otherwise available to Buyer, by written notice to Seller given at any time prior to Closing, cancel this Agreement. Upon such cancellation, Buyer shall be entitled to a return of all earnest money deposits.

(h) Tax Re-Assessment. Provide confirmation from Montgomery County that they will adjust the current tax rate from current assessed value to reflect a true market value in line with the purchase price.

## ARTICLE 5 CLOSING

5.1 Time of Closing. The closing of this transaction (referred to in this Agreement as the “**Closing**”) shall occur at the office of Buyer’s attorneys, Shulman Curtin & Grundner, P.C. in Syracuse, New York not later than the date that is fifteen (30) days after the satisfaction or waiver of all of Buyer’s conditions to close as set forth in **Section 4.1** above, but in no event later than sixty (75) days from the date of this Agreement, unless otherwise agreed to by the parties in writing.

5.2 Seller’s Closing Documents. Seller shall deliver the following documents to Buyer at the Closing, each of which shall have been duly executed and, where appropriate, acknowledged:

(a) A warranty deed with lien covenant (the “**Deed**”) conveying good and marketable title to the Property which is insurable as such by the Title Insurer selected by Buyer authorized to do business in New York State at the statutory rate without charge for extra hazardous risks pursuant to an ALTA Owners Policy of Title Insurance with New York Endorsement, subject only to the Approved Title Exceptions, and except liens for taxes, assessments and governmental charges not yet due and payable, or due and payable but not yet delinquent. The Deed shall be recorded in the Oswego County Clerk’s Office;

(b) The Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate and Certification of Exemption from Payment of Estimated Personal Income Tax (Form TP-584), and the Real Property Transfer Report (Form RP-5217);

(c) A bill of sale conveying the Salvage to Buyer free and clear of all liens and encumbrances;

(d) A certification to Buyer and Escrow Agent, signed and acknowledged by Seller under penalties of perjury, certifying that Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Section 1445 and 7701 of the Internal Revenue Code of 1986 and the related Treasury Regulations;

(e) A Statement of Sale with applicable pro-rations and adjustments as of the date of Closing;

(f) A Certificate of Good Standing issued by the New York State Department of State together with reasonable evidence of the authority of Seller’s signatory, including, but without limitation, a resolution signed by the Managing Member of Seller, and minutes of a meeting of the members of Seller approving the transactions contemplated herein and the authority of such signatory;

(g) An assignment of any and all of Seller’s rights to rail service, together with originals or true, correct and complete copies of any and all contracts or agreements relating thereto; and

(h) Such other documents as may be necessary or appropriate to transfer and convey title to all of the Property, including, without limitation, the Salvage, to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement, including, without limitation, any documents required by Escrow Agent and Title Insurer in connection with the closing of this transaction and issuance the title policy required under this Agreement.

5.3 Title Policy. Promptly following the Closing, Buyer will receive a standard owner's policy of title insurance issued by the Title Insurer in the full amount of the Purchase Price, effective as of the Closing, insuring Buyer that title to the Property is vested in Buyer, subject only to the usual printed exceptions and exclusions contained in such title insurance policies and to the Approved Title Exceptions. The premium for the standard owner's title insurance policy shall be paid by Seller at Closing. Seller, at Seller's expense, shall satisfy all of the Title Insurer's requirements for issuance of such policy, other than those, if any, within Buyer's control. At any time prior to Closing, Buyer may request title insurance endorsements not otherwise provided by Seller in accordance with **Section 4.1(a)(ii)**, in which case Buyer shall pay the difference between the premium for such policy and any special endorsements requested by Buyer and the premium for a standard coverage policy in the amount of the Purchase Price. If Buyer elects to obtain additional title insurance endorsements, the Closing shall be conditioned, in addition to any other conditions, upon the issuance of such a policy in a form acceptable to Buyer.

5.4 Closing Costs. Upon the Closing, Seller and Buyer each agree to pay one-half of the escrow charges of the Escrow Agent. Fees for recording the Deed and filing the Real Property Transfer Report will be paid by Buyer. Seller will pay any documentary transfer tax, stamp tax, real estate conveyance tax or similar tax or fee due and payable in connection with this transaction. Seller will also pay any transaction privilege tax, sales tax, or use tax payable on account of the sale of any portion of the Property. Any other closing costs not provided for above or elsewhere in this Agreement shall be paid by Buyer and Seller according to the usual and customary practice for commercial real estate transactions in Syracuse, New York. The parties shall each be responsible for their respective legal fees in connection with this Agreement.

5.5 Prorations. Real estate taxes and assessments shall be prorated in escrow as of the Closing, based upon the latest available information, provided that Seller is responsible for any improvement liens and other special assessments pertaining to the Property. If, at the Closing, the actual real estate tax and assessment statements are not available, then, following the Closing and within thirty (30) days of receipt by either Buyer or Seller of the actual tax statements, Buyer and Seller shall re-prorate real estate taxes among themselves and make any necessary adjusting payments. All pro-rations and/or adjustments called for in this Agreement will be made on the basis of a 30-day month and actual days elapsed unless otherwise specifically agreed in writing by Seller and Buyer. Seller shall arrange for a final reading and shall pay for all utility services to the date of Closing.

## **ARTICLE 6**

### **SELLER'S REPRESENTATIONS AND WARRANTIES**

6.1 Nature of Seller's Representations. Each of the representations and warranties of Seller contained in this **Article 6** constitutes a material part of the consideration to Buyer, and Buyer is relying on the correctness and completeness of these representations and warranties in entering into this transaction. Each of the representations and warranties is true and accurate as of the Effective Date, will be confirmed by Seller as true and accurate as of the Closing and will survive the Closing, regardless of any investigation or inspection by Buyer.

6.2 Representations and Warranties. Seller represents and warrants to Buyer as follows:



(a) Warranty of Title/Authority. Seller is the holder of fee simple title to the Property. No person, firm, corporation or entity, other than Buyer has as of the date hereof, or as of the Closing will have, any right or option to acquire fee title to or to lease the Property or any portion thereof or any interest therein. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, and Seller has the power and authority to enter into this Agreement and to consummate the transaction contemplated by this Agreement, and its execution of this Agreement has been authorized by appropriate action of Seller. Upon the execution and delivery of this Agreement and any document to be delivered by Seller on or prior to the Closing, this Agreement and such document shall constitute the valid and binding obligation and agreement of Seller, enforceable against Seller in accordance with its terms. Seller has no knowledge of any title defect, lien, encumbrance, adverse claim, or other matter relating to the title to the Property or to the title insurance coverage for the Property which Seller has not disclosed in writing to Buyer and the Title Insurer.

(b) Litigation. Neither Seller nor any of its constituent members is a party to any pending or threatened action, suit, proceeding or investigation, at law or in equity or otherwise, in, for or by any court or governmental board, commission, agency, department or officer arising from or relating to this transaction, the Property or to the past or present operations and activities of Seller upon or relating to the Property. No litigation, administrative or other proceeding (including any condemnation proceeding), or order or judgment is pending, outstanding, or threatened against or relating to any portion of the Property or which could affect the performance by Seller of any of its obligations under this Agreement. Seller has no knowledge of any facts or circumstances which could give rise to such action.

(c) Governmental Restrictions. Seller has not received, nor is Seller aware of, any notifications, restrictions, or stipulations from any governmental authority requiring any work to be done on the Property or threatening the use or removal of the Salvage. There are no pending or threatened condemnation proceedings affecting any portion of the Property. Seller is not subject to, nor does any basis exist for, any order, judgment, decree or governmental restriction which would adversely affect either the Property, or any portion thereof, or the use thereof in the manner presently being conducted by Seller.

(d) Compliance. Seller has complied, in all respects, with all laws, ordinances, rules, regulations, requirements and orders of federal, state, or local governments and/or their agencies with respect to the Property and the operations presently being conducted by Seller upon the Property. Neither the Property, nor any improvement or building upon the Property, nor the continued maintenance, operation or use of any portion of the Property, nor the current operations on the Property, violates, in any respect, any laws, ordinances, rules, regulations, requirements and orders. No default or breach exists, or as of the Closing will exist, under any of the covenants, conditions, restrictions, rights-of-way or easements affecting the Property or any portion thereof, nor shall any of such covenants, conditions, restrictions, rights-of-way or easements restrict the use of the Property as otherwise permitted under applicable zoning ordinances for Buyer's intended use thereof.

(e) No Violation of Other Agreements. The execution of this Agreement and consummation of the transactions contemplated hereby will not constitute a violation of any agreement to which Seller is a party or by which Seller is bound, or any law, order or regulation applicable to Seller. No consents are required to be obtained from any third party to consummate the transactions contemplated herein.

(f) Non-Foreign Seller. Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986 and the related Treasury Regulations.

(g) Unrecorded Documents. There are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal affecting or relating to the Property in any way.

(h) Environmental Matters. Any recognized environmental conditions affecting the Property are described in **Schedule 6.2(h)** attached hereto. There are no Consent Orders or Cleanup Plans in effect between Owner and either the New York Department of Environmental Conservation or the U.S. Environmental Protection Agency. Except as otherwise provided in **Schedule 6.2(h)** attached hereto, (i) the Property is not impacted by any Hazardous Substance and is not now in violation of any Environmental Law; (ii) Seller has not caused or allowed the use, generation, manufacture, production, treatment, storage, release, discharge, or disposal of any Hazardous Substance on, under, or about the Property, and has not caused or allowed the transportation to or from the Property of any Hazardous Substance; (iii) Seller has received no warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property or adjacent property is or has been in violation of any Environmental Law; (iv) Seller is not aware of any facts or circumstances that could give rise to a violation of an Environmental Law; and (v) Seller has complied with all applicable reporting requirements under all Environmental Laws concerning the disposal or release of Hazardous Substance at or from the Property and Seller has either made no such reports or agrees that a copy of such reports will be provided to Buyer within three (3) days after the Opening Date. True and complete copies of all Variance and abatement submittals to the State of NY DOL asbestos bureau shall be provided to Buyer in advance for Buyer's review and comment.

(i) Taxes. Seller does not have any liability for any taxes, or any interest or penalty in respect thereof, of any nature that may be assessed against Buyer or that are or may become a lien against the Property, including, without limitation, the Salvage, other than the lien for current real property taxes and assessments not yet due and payable.

(j) Outside Contractors. The Property is not subject to any service contracts or other agreements with outside contractors or vendors that will survive Closing and be binding upon Buyer or the Property.

## ARTICLE 7 ADDITIONAL COVENANTS

7.1 Possession. Possession of the Property shall be delivered to Buyer upon the Closing.

7.2 Pre-Closing Covenants. Beginning on the Effective Date and until the earlier of the Closing or the cancellation of this Agreement, Seller covenants and agrees as follows: (i) Seller shall pay prior to delinquency all real estate taxes and assessments secured by a lien on the Property; (ii) Seller shall not commit waste on the Property; (iii) Seller shall not make any physical alterations to the Property; (iv) Seller shall maintain the Property (or cause it to be maintained) in good condition and in full compliance with all applicable laws and regulations, including Environmental Laws; (v) Seller shall cease

to create or allow title exceptions (such as easements or liens encumbering the Property or any portion thereof) that will not be released prior to or at the Closing; and (vi) Seller shall not remove any Salvage from the Land.

7.3 Consent of Buyer. Notwithstanding any provision of this Agreement to the contrary, Seller shall not take any of the following actions prior to the earlier of the Closing or the termination of this Agreement without the prior written consent of Buyer, which consent may be given or withheld in Buyer's sole and absolute discretion: (i) Fail to make a payment or affirmatively take or affirmatively consent to any action which causes any new lien, obligation or encumbrance to be placed or imposed on the Property or any existing lien to be in default or affirmatively take or affirmatively consent to any other action affecting title to the Property that would result in an exception to title which is not already an Approved Title Exception, including, without limitation, the grant of any easement, license, permit, agreement or any other legal or beneficial interest in or to the Property or amend, modify or extend the term of any matter affecting title to the Property; (ii) Grant access, license or use rights to the Property to any person other than Buyer and Buyer's agents and representatives; (iii) Agree or negotiate to sell, convey, assign, transfer or otherwise dispose of any interest in the Property; and (iv) Seek any change to the zoning classification applicable to the Property or any other governmental restrictions applicable to the Property; or (v) take any other action that would lessen the value of, or otherwise have a material impact on, the Property, including, without limitation, Salvage, and Buyer's rights under this Agreement.

7.4 Indemnification of Buyer for Environmental Matters. Except with respect to the "Environmental Costs" and the "Abatement Costs" (as such capitalized terms are defined below), Seller shall protect, indemnify and hold harmless Buyer and its members, managers, affiliates, consultants, employees, agents, successors and assigns for, from, and against any and all loss, damage, cost, expense, penalty, or liability (including reasonable investigation and attorneys' fees and costs) (collectively, "Claims") directly or indirectly arising out of or attributable to any of the following, to the extent occurring prior to the Closing or occurring after the Closing, if such occurrence is a result of acts or circumstances occurring or existing prior to the Closing: (a) the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property; (b) the violation of any Environmental Law; (c) any claim, inquiry, investigation, or proceeding relating to environmental conditions on or about the Property; (d) the Cleanup Activities; and (e) any other environmental contamination of the Property or adjacent property; or any breach of the representations and warranties set forth in **Section 6.2(h)** (to the extent not otherwise included in clauses (a) through (e) of this **Section 7.4**). This indemnification obligation includes, without limitation all consequential damages; and the costs of any required or necessary investigation, analyses, repair, cleanup, detoxification, testing or monitoring and the preparation and implementation of any plans. This indemnity survives the Closing or the cancellation of this Agreement and shall continue thereafter so long as Buyer is subject to any possible claim or threatened, pending, or completed action, suit or proceeding, whether civil, criminal, or investigative, regarding the health, industrial hygiene, or environmental conditions on, under, within or about the Property or down gradient or adjacent property and included within the coverage of this **Section 7.4**.

7.5 Condemnation. If, prior to Closing, all or any portion of the Property is taken by or under threat of condemnation or eminent domain (including by deed in lieu of condemnation) or Buyer receives notice from any governmental agency or other person with the power of eminent domain threatening the taking of all or any portion of the Property (any such event being referred to as a "**Condemnation Event**"), Buyer may, at its election, cancel this Agreement by giving written notice of cancellation to Seller and Escrow Agent within five days of occurrence of the Condemnation Event. If Buyer so elects to cancel this Agreement, then all earnest money deposits will be returned to Buyer, and the Agreement shall be cancelled. If, prior to Closing, there is a Condemnation Event and Buyer elects to close the escrow

notwithstanding the taking, Buyer shall receive all awards or payments made to which Seller is entitled for such taking, and Buyer shall proceed to close the escrow and pay the total Purchase Price.

7.6 Risk of Loss. The risk of loss or damage to the Property and all liability to third persons until the Closing shall be borne by Seller.

## **ARTICLE 8 DEFAULTS AND REMEDIES**

8.1 Seller's Remedies. If Buyer is in default with respect any of its obligations under this Agreement, then upon receipt by Escrow Agent of written notice of such default by Buyer, the earnest money deposit shall be forwarded to Seller by Escrow Agent as liquidated damages and not as a penalty, and as the sole and exclusive remedy available to Seller as a result of Buyer's default hereunder.

8.2 Buyer's Remedies. If Seller is in default under this Agreement, then, in addition to whatever other remedies are available to Buyer at law or in equity, including the right for damages and/or the right to have specific performance of this Agreement, Buyer may cancel this Agreement, such cancellation to be effective immediately upon Buyer giving written notice of cancellation to Seller and Escrow Agent. Upon such cancellation, Buyer will be entitled to a return of all earnest money deposits and Seller shall pay Buyer for any of Buyer's costs and expenses incurred in connection with this transaction, including, without limitation, any due diligence costs and attorneys fees; such payment shall be made within ten (10) days of Buyer's invoice. The provisions of this Section shall survive any cancellation or termination of this Agreement.

8.3 Mediation. Notwithstanding anything to the contrary contained in **Sections 8.1 and 8.2**, no party shall pursue legal action to enforce any claim or remedy for any alleged violation of this Agreement by the other without first submitting the same to mediation in accordance with the procedures of the American Arbitration Association ("AAA"). Mediation shall occur no later than thirty (30) days after selection of the mediator. The mediator shall be chosen by mutual agreement and if the parties cannot agree, the mediator shall be appointed in accordance with the AAA procedures.

## **ARTICLE 9 GENERAL PROVISIONS**

9.1 Assignment. At any time prior to the Closing, Buyer may assign its rights under this Agreement without Seller's consent to a special purpose entity with Buyer, or its assignee, as manager thereof. Upon execution by the assignee of a document whereby the assignee assumes the obligations of Buyer and agrees to perform such obligations, Seller hereby agrees that the assignor shall be released from all obligation and liability as Buyer under this Agreement and that Seller will accept performance of all of Buyer's obligations by the assignee.

9.2 Cooperation. Seller shall cooperate fully with Buyer in obtaining any necessary governmental approvals to the transfer of any item of property being sold to Buyer pursuant to this Agreement.

9.3 No Shop. Prior to the Closing or Buyer's earlier termination of this Agreement, neither Seller nor any of its affiliates, agents, employees and related parties will engage in any discussions or



negotiations regarding any proposal for an Alternative Transaction (as defined in this Section). Prior to the Closing or Buyer's earlier termination of this Agreement, Seller shall deal exclusively with Buyer and its designees and shall not (and will use its best efforts to assure that its officers, directors, shareholders, employees, agents and affiliates do not on its behalf) take any action to solicit, initiate, seek, encourage or support any inquiry, proposal or offer from, furnish any information to, or participate in any discussions or negotiations with, any corporation, partnership, person or other entity or group (other than discussions with Buyer) regarding (a) the sale or other disposition of the Property, the Salvage, or any portion thereof, (b) any acquisition of Seller, any merger or consolidation with or involving Seller, or (c) any other transaction resulting in a disposition of the Property, the Salvage, or any portion thereof (an "**Alternative Transaction**").

9.4 Confidentiality. The parties agree that the terms of this Agreement (but not the existence of the Agreement) are confidential and except to the extent required by law, the parties shall not disclose the contents of this Agreement to any third party, except to the parties' respective officers, directors, shareholders, employees, agents, attorneys, accountants, lenders, professional advisers, and others who have a legitimate business reason to know such contents (collectively, "**Permitted Parties**"); provided that each party shall cause its Permitted Parties to keep the terms of this Agreement confidential. In addition, all information acquired by the parties with respect to the other party's business during the course of this Agreement, including but not be limited to the nature and extent of the costs, income or other financial information, shall be confidential and shall not be disclosed to any third parties during the term of this Agreement, and for two (2) years after the cancellation or termination of this Agreement or the Closing, other than as needed to such parties' Permitted Parties, provided that each party shall cause its Permitted Parties to keep such information confidential. Notwithstanding the foregoing, this Section imposes no obligation upon a party with respect to information that: (a) is or becomes a matter of public knowledge through no fault of the party; (b) is lawfully received by the party from a third party without a duty of confidentiality; (c) is disclosed by the party with the other party's prior written approval; and (d) is necessary for the purpose of obtaining any Permit, selling the Property, Salvage, or any portion thereof to third parties, or performing the parties' obligations under this Agreement or any agreement contemplated under this Agreement.

9.5 Brokerage. Buyer and Seller each warrant to the other that they have not dealt with any broker in connection with this transaction except Pyramid Brokerage. If any person shall assert a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the party under whom the finder or broker is claiming shall indemnify, defend, and hold harmless the other party for, from and against any and all claims in connection with such claim or any action or proceeding brought on such claim.

9.6 Binding Effect. The provisions of this Agreement are binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

9.7 Attorneys' Fees. If either party to this Agreement initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such legal action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover from the non-prevailing party in any such legal action or proceeding its reasonable costs and expenses of suit, including reasonable attorneys' fees and expert witness fees.

9.8 Waivers. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; *provided, however*, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.



9.9 Notices. All notices shall be in writing and shall be made by hand delivery, facsimile, express delivery service, freight prepaid, or by certified mail, postage prepaid, return receipt requested. Notices will be delivered or addressed to Seller and Buyer at the addresses or facsimile numbers set forth on the first page of this Agreement or at such other address or number as a party may designate to the other party in writing. Any such notice shall be deemed to be given and received and shall be effective (a) on the date on which the notice is delivered, if notice is given by hand delivery; (b) on the date of actual receipt, if the notice is sent by express delivery service; (c) on the date on which it is received or rejected as reflected by a receipt if given by United States mail, addressed and sent as aforesaid; and (d) when transmitted properly, in the case of facsimile transmission, with a facsimile being deemed to have been properly transmitted as of the date of successful transmission of the entire notice, as confirmed by return transmission; ***provided, however***, that if successful transmission is completed after 6:00 p.m., local time for the recipient on such day, then the facsimile transmission will be deemed to have been given and received and become effective on the next succeeding day.

Copies of any notice (as an accommodation and not as a condition to its effectiveness) shall likewise be sent by the same means to the attorney for the respective parties, as follows: if to Buyer's Attorney: Shulman Curtin & Grundner, P.C., 250 South Clinton Street, Suite 502, Syracuse, New York 13202 ATTN: C. Daniel Shulman, Esq., and if to Seller's Attorney: James H. Messenger, Jr. Esq., 441 South Salina Street, Suite 211, Syracuse, New York 13202.

9.10 Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

9.11 Survival. The provisions of this Agreement, including, without limitation, any and all obligations of the parties that are to be performed after the Closing, will survive the Closing or the recordation of the Deed.

9.12 Counterparts. This Agreement may be executed in counterparts (and by different parties to this Agreement in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy to the other party shall be effective as delivery of a manually executed counterpart of this Agreement.

9.13 Construing the Agreement. Each of the parties to this Agreement acknowledges that such party has had the benefit of independent counsel with regard to this Agreement and that this Agreement has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this Agreement shall not be construed or interpreted for or against any party to this Agreement based upon authorship or any other factor but shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties to this Agreement.

9.14 Partial Invalidity. If any portion of this Agreement is determined to be unconstitutional, unenforceable or invalid, such portion of this Agreement shall be stricken from and construed for all purposes not to constitute a part of this Agreement, and the remaining portion of this Agreement shall remain in full force and effect and shall, for all purposes, constitute the entire Agreement.

9.15 Governing Law; Venue. This Agreement shall be construed according to the laws of the State of New York, without giving effect to its conflict of laws principles. The parties hereto hereby consent that venue of any action brought under this Agreement, including any mediation proceeding, shall

be in Onondaga County, New York or the federal courts for and in northern district of the State of New York.

9.16 Time of Essence; Time Periods. Time is of the essence of this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

9.17 Entire Agreement. This Agreement, including any exhibits, constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by Buyer and Seller.

9.18 Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope, meaning or construction of this Agreement or any of the provisions hereof.

Acceptance. Seller shall have until 5:00 PM June 11, 2013 to accept this offer, or it shall be deemed null and void.

**EXECUTED** as of the Effective Date written on the first page of this Agreement.

**SELLER: Beech-Nut Nutrition Corp.**

By: \_\_\_\_\_  
Name: Steve Foster  
Title: CFO

**BUYER:**

**TD Development, LLC**

By: \_\_\_\_\_  
Todd Clifford, Managing Member